

D86LLESF

Verdict

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S14 11 Cr. 1091 (VM)

5 PETER LESNIEWSKI, MARIE BARAN
6 and JOSEPH RUTIGLIANO,

7 Defendants.

-----x

8
9 August 6, 2013
2:14 p.m.

10
11 Before:

12 HON. VICTOR MARRERO,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: JUSTIN S. WEDDLE

DANIEL BEN TEHRANI

18 NICOLE WARE FRIEDLANDER

Assistant United States Attorneys

19 LAW OFFICES OF JOSHUA L. DRATEL, P.C.

20 Attorneys for Defendant Peter Lesniewski

21 BY: JOSHUA LEWIS DRATEL

LINDSAY A. LEWIS

22 DURKIN & ROBERTS

Attorneys for Defendant Peter Lesniewski

23 BY: THOMAS ANTHONY DURKIN

D86LLESF

Verdict

APPEARANCES CONTINUED

KOEHLER & ISAACS, LLP

Attorneys for Defendant Marie Baran

BY: JOEY JACKSON

JOSEPH W. RYAN, JR.

KEVIN MENEILLY

Attorneys for Defendant Joseph Rutigliano

- also present -

Annie Chen

Emma Larson, Government Paralegals

SA Frank LoMonaco, FBI

Yeni Yrizarry, Defendant Baran Paralegal

oOo

D86LLESF

Verdict

1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Thank you. Be seated. Good afternoon.

4 Welcome back.

5 The Court has been handed a jury note through the
6 court security officer. It's dated today at 1:30 p.m. and it
7 reads: We have a verdict.

8 Would the court officer bring in the jury.

9 The note will be marked Court Exhibit No. 6.

10 (Jury present; time noted: 2:15 p.m.)

11 THE COURT: Good afternoon. Welcome back.

12 The Court notes for the record that the 12 regular
13 members of the jury impaneled in this action have been returned
14 to the courtroom and are seated in the jury box in their proper
15 places.

16 Ms. Howe, please rise.

17 Has the jury unanimously agreed upon a verdict?

18 THE FOREPERSON: Yes.

19 THE COURT: Please hand your verdict form to the
20 clerk.

21 THE FOREPERSON: Can I sit down?

22 THE COURT: Yes.

23 (Pause)

24 THE COURT: Ladies and gentlemen of the jury, your
25 verdict will now be published, that is, read out loud in open

D86LLESF

Verdict

1 court. Pay close attention as the verdict is published. You
2 may be asked individually whether the verdict as published
3 constitutes your individual verdict in all respects.

4 The clerk will now publish the verdict.

5 Ms. Howe, please rise again.

6 THE LAW CLERK: Count One, conspiracy to commit mail
7 fraud, wire fraud, and healthcare fraud.

8 Ms. Foreperson, considering the elements of the crime
9 of conspiracy to commit mail fraud, wire fraud, and healthcare
10 fraud as described in the Court's instructions, do you find
11 that the government has proved beyond a reasonable doubt that
12 the defendant Peter Lesniewski is guilty as this crime as
13 charged in Count One of the indictment?

14 THE FOREPERSON: Yes.

15 THE LAW CLERK: So say you all.

16 Ms. Foreperson, considering the elements of the crime
17 of conspiracy to commit mail fraud, wire fraud, and healthcare
18 fraud as described in the Court's instructions, do you find
19 that the government has proved beyond a reasonable doubt that
20 the defendant Marie Baran is guilty of this crime as charged in
21 Count One of the indictment?

22 THE FOREPERSON: Yes.

23 THE LAW CLERK: So say you all.

24 Ms. Foreperson, considering the elements of the crime
25 of conspiracy to commit mail fraud, wire fraud, and healthcare

D86LLESF

Verdict

1 fraud as described in the Court's instructions, do you find
2 that the government has proved beyond a reasonable doubt that
3 the defendant Joseph Rutigliano is guilty of this crime as
4 charged in Count One?

5 THE FOREPERSON: Yes.

6 THE LAW CLERK: So say you all.

7 Count Two, conspiracy to commit mail fraud, wire
8 fraud, and healthcare fraud.

9 Ms. Foreperson, considering the elements of the crime
10 of conspiracy to commit mail fraud, wire fraud, and healthcare
11 fraud as described in the Court's instructions, do you find
12 that the government has proved beyond a reasonable doubt that
13 the defendant Marie Baran is guilty of this crime as charged in
14 Count Two of the indictment?

15 THE FOREPERSON: Yes.

16 THE LAW CLERK: So say you all.

17 Ms. Foreperson, considering the elements of the crime
18 of conspiracy to commit mail fraud, wire fraud, and healthcare
19 fraud as described in the Court's instructions, do you find
20 that the government has proved beyond a reasonable doubt that
21 the defendant Joseph Rutigliano is guilty of this crime as
22 charged in Count Two of the indictment?

23 THE FOREPERSON: Yes.

24 THE LAW CLERK: So say you all.

25 Count Three, conspiracy to defraud the United States

D86LLESF

Verdict

1 Railroad Board.

2 Considering, Ms. Foreperson, considering the elements
3 of the crime of conspiracy to defraud the United States
4 Railroad Board or RRB as described in the Court's instructions,
5 do you find that the government has proved beyond a reasonable
6 doubt that the defendant Peter Lesniewski is guilty of this
7 crime as charged in Count Three of the indictment?

8 THE FOREPERSON: Yes.

9 THE LAW CLERK: So say you all.

10 Ms. Foreperson, considering the elements of the crime
11 of conspiracy to defraud the United States RRB as described in
12 the Court's instructions, do you find that the government has
13 proved beyond a reasonable doubt that the defendant Marie Baran
14 is guilty of this crime as charged in Count Three of the
15 indictment?

16 THE FOREPERSON: Yes.

17 THE LAW CLERK: So say you all.

18 Ms. Foreperson, considering the elements of the crime
19 of conspiracy to defraud the United States RRB as described in
20 the Court's instructions, do you find that the government has
21 proved beyond a reasonable doubt that the defendant Joseph
22 Rutigliano is guilty of this crime as charged in Count Three of
23 the indictment?

24 THE FOREPERSON: Yes.

25 THE LAW CLERK: So say you all.

D86LLESF

Verdict

1 Count Four, conspiracy to defraud the United States
2 RRB.

3 Ms. Foreperson, considering the elements of the crime
4 of conspiracy to defraud the United States RRB as described in
5 the Court's instructions, do you find that the government has
6 proved beyond a reasonable doubt that the defendant Marie Baran
7 is guilty of this crime as charged in Count Four of the
8 indictment?

9 THE FOREPERSON: Yes.

10 THE LAW CLERK: So say you all.

11 Ms. Foreperson, considering the elements of the crime
12 of conspiracy to defraud the United States RRB as described in
13 the Court's instructions, do you find that the government has
14 proved beyond a reasonable doubt the defendant Joseph
15 Rutigliano is guilty of this crime as charged in Count Four of
16 the indictment?

17 THE FOREPERSON: Yes.

18 THE LAW CLERK: Count Five, healthcare fraud.

19 Ms. Foreperson, considering the elements of the crime
20 of healthcare fraud as described in the Court's instructions,
21 do you find that the government has proved beyond a reasonable
22 doubt that the defendant Peter Lesniewski is guilty of this
23 crime as charged in Count Five of the indictment?

24 THE FOREPERSON: Yes.

25 THE LAW CLERK: So say you all.

D86LLESF

Verdict

Count Six, healthcare fraud.

Ms. Foreperson, considering the elements of the crime of healthcare fraud as described in the Court's instructions, do you find that the government has proved beyond a reasonable doubt that the defendant Peter Lesniewski is guilty of this crime as charged in Count Six of the indictment?

THE FOREPERSON: Yes.

THE LAW CLERK: Count Seven, healthcare fraud.

Ms. Foreperson, considering the elements of the crime of healthcare fraud as described in the Court's instructions, do you find that the government has proved beyond a reasonable doubt that the defendant Marie Baran is guilty of this crime as charged in Count Seven of the indictment?

THE FOREPERSON: Yes.

THE LAW CLERK: So say you all.

Count Eight, healthcare fraud.

Ms. Foreperson, considering the elements of the crime of healthcare fraud as described in the Court's instructions, do you find that the government has proved beyond a reasonable doubt that the defendant Marie Baran is guilty of this crime as charged in Count Eight of the indictment?

THE FOREPERSON: Yes.

THE LAW CLERK: So say you all.

Count Nine, mail fraud.

Ms. Foreperson, considering the elements of the crime

D86LLESF

Verdict

1 of mail fraud as described in the Court's instructions, do you
2 find that the government has proved beyond a reasonable doubt
3 that the defendant Marie Baran is guilty of this crime as
4 charged in Count Nine of the indictment?

5 THE FOREPERSON: Yes.

6 THE LAW CLERK: Count Ten, mail fraud.

7 Ms. Foreperson, considering the elements of the crime
8 of mail fraud as described in the Court's instructions, do you
9 find that the government has proved beyond a reasonable doubt
10 that the defendant Joseph Rutigliano is guilty of this crime as
11 charged in Count Ten?

12 THE FOREPERSON: Yes.

13 THE LAW CLERK: So say you all.

14 Count Eleven, mail fraud.

15 Ms. Foreperson, considering the elements of the crime
16 of mail fraud as described in the Court's instructions, do you
17 find that the government has proved beyond a reasonable doubt
18 that the defendant Marie Baran is guilty of this crime as
19 charged in Count Eleven of the indictment?

20 THE FOREPERSON: Yes.

21 THE LAW CLERK: So say you all.

22 Count Twelve, mail fraud.

23 Ms. Foreperson, considering the elements of the crime
24 of mail fraud as described in the Court's instructions, do you
25 find that the government has proved beyond a reasonable doubt

D86LLESF

Verdict

1 that the defendant Peter Lesniewski is guilty of this crime as
2 charged in Count Twelve of the indictment?

3 THE FOREPERSON: Yes.

4 THE LAW CLERK: So say you all.

5 Ms. Foreperson, considering the elements of the crime
6 of mail fraud as described in the Court's instructions, do you
7 find that the government has proved beyond a reasonable doubt
8 that the defendant Joseph Rutigliano is guilty of this crime as
9 charged in Count Twelve of the indictment?

10 THE FOREPERSON: Yes.

11 THE LAW CLERK: So say you all.

12 Count Thirteen, mail fraud.

13 Ms. Foreperson, considering the elements of the crime
14 of mail fraud as described in the Court's instructions, do you
15 find that the government has proved beyond a reasonable doubt
16 that the defendant Peter Lesniewski is guilty of this crime as
17 charged in Count Thirteen of the indictment?

18 THE FOREPERSON: Yes.

19 THE LAW CLERK: Ms. Foreperson, considering the
20 elements of the crime of mail fraud as described in the Court's
21 instructions, do you find that the government has proved beyond
22 a reasonable doubt the defendant Joseph Rutigliano is guilty of
23 this crime as charged in Count Thirteen of the indictment?

24 THE FOREPERSON: Yes.

25 THE LAW CLERK: Count Fourteen, wire fraud.

D86LLESF

Verdict

1 Ms. Foreperson, considering the elements of the crime
2 of wire fraud as described in the Court's instructions, do you
3 find that the government has proved beyond a reasonable doubt
4 that the defendant Peter Lesniewski is guilty of this crime as
5 charged in Count Fourteen of the indictment?

6 THE FOREPERSON: Yes.

7 THE LAW CLERK: Ms. Foreperson, considering the
8 elements of the crime of wire fraud as described in the Court's
9 instructions, do you find that the government has proved beyond
10 a reasonable doubt that the defendant Joseph Rutigliano is
11 guilty of this crime as charged in Count Fourteen of the
12 indictment?

13 THE FOREPERSON: Yes.

14 THE LAW CLERK: So say you all.

15 Count Fifteen, wire fraud.

16 Ms. Foreperson, considering the elements of the crime
17 of wire fraud as described in the Court's instructions, do you
18 find that the government has proved beyond a reasonable doubt
19 that the defendant Joseph Rutigliano is guilty of this crime as
20 charged in Count Fifteen of the indictment?

21 THE FOREPERSON: Yes.

22 THE LAW CLERK: So say you all.

23 Count Sixteen, wire fraud.

24 Ms. Foreperson, considering the elements of the crime
25 of wire fraud as described in the Court's instructions, do you

D86LLESF

Verdict

1 find that the government has proved beyond a reasonable doubt
2 that the defendant Peter Lesniewski is guilty of this crime as
3 charged in Count Sixteen of the indictment?

4 THE FOREPERSON: Yes.

5 THE LAW CLERK: So say you all.

6 Ms. Foreperson, considering the elements of the crime
7 of wire fraud as described in the Court's instructions, do you
8 find that the government has proved beyond a reasonable doubt
9 that the defendant Joseph Rutigliano is guilty of this crime as
10 charged in Count Sixteen of the indictment?

11 THE FOREPERSON: Yes.

12 THE LAW CLERK: So say you all.

13 Count Seventeen, wire fraud.

14 Ms. Foreperson, considering the elements of crime of
15 wire fraud as described in the Court's instructions, do you
16 find that the defendant Peter Lesniewski is guilty of this
17 crime as charged in Count Seventeen of the indictment?

18 THE FOREPERSON: Yes.

19 THE LAW CLERK: So say you all.

20 Count Eighteen, wire fraud.

21 Ms. Foreperson, considering the elements of crime of
22 wire fraud as described in the Court's instructions, do you
23 find that the government has proved beyond a reasonable doubt
24 that the defendant Marie Baran is guilty of this crime as
25 charged in Count Eighteen of the indictment?

D86LLESF

Verdict

1 THE FOREPERSON: Yes.

2 THE LAW CLERK: So say you all.

3 Count Nineteen, wire fraud.

4 Considering the elements of the crime of wire fraud as
5 described in the Court's instructions, do you find that the
6 government has proved beyond a reasonable doubt that the
7 defendant Peter Lesniewski is guilty of this crime as charged
8 in Count Nineteen of the indictment?

9 THE FOREPERSON: Yes.

10 THE LAW CLERK: So say you all.

11 Count Twenty, wire fraud.

12 Ms. Foreperson, considering the elements of the crime
13 of wire fraud as described in the Court's instructions, do you
14 find that the government has proved beyond a reasonable doubt
15 that the defendant Marie Baran is guilty of this crime as
16 charged in Count Twenty of the indictment?

17 THE FOREPERSON: Yes.

18 THE LAW CLERK: So say you all.

19 Count Twenty-One, false statement.

20 Ms. Foreperson, considering the elements of the crime
21 of false statement as described in the Court's instructions, do
22 you find that the government has proved beyond a reasonable
23 doubt that the defendant Joseph Rutigliano is guilty of this
24 crime as charged in Count Twenty-One of the indictment?

25 THE FOREPERSON: Yes.

D86LLESF

Verdict

1 THE LAW CLERK: So say you all.

2 THE COURT: Please hand the verdict to the clerk. You
3 may be seated.

4 Does any party wish the jury to be polled?

5 MR. RYAN: Yes, your Honor. Thank you.

6 THE COURT: The clerk will poll the jury.

7 THE LAW CLERK: When I call your name, please indicate
8 whether the verdict as published constitutes your individual
9 verdict. You may answer yes or no.

10 (Jury polled; each juror answered in the affirmative)

11 THE LAW CLERK: Members of the jury, you have heard
12 your verdict as it stands recorded. The jury has been polled
13 and the verdict is unanimous.

14 THE COURT: The clerk shall file and record the
15 verdict.

16 Do either side or any counsel object to the discharge
17 of the jury in this case No. 11 CR 1091?

18 MR. WEDDLE: On behalf of the United States, we do
19 not, your Honor.

20 MR. DURKIN: No, Judge.

21 MR. RYAN: No objection.

22 MR. JACKSON: No, your Honor.

23 THE COURT: Thank you.

24 Ladies and gentlemen, you have completed your duties
25 as jurors, but before discharging you I have just a few

D86LLESF

Verdict

1 comments to make.

2 You have just performed one of the most important
3 activities of being a United States citizen. As you know, our
4 system of government is divided into three branches: the
5 executive, the legislative, and judicial branches. As a
6 citizen, in most cases your only participation with the
7 executive branch of government is when you cast your vote for
8 President. In the legislative branch, you vote for your
9 senators and members of Congress who represent your interests.

10 But your participation as jurors in the judicial
11 branch goes to the very heart of making our judicial system
12 work and making it one of the most successful and fair systems
13 in the world. So you can see the importance of the task you
14 have just completed for us for all of us, the Court, the
15 lawyers, and the parties.

16 We thank you for having performed your duty in an
17 exemplary fashion.

18 The law clerk will escort you from the jury box to the
19 jury room. Please collect your belongings, return all copies
20 of exhibits to the clerk and all the papers that you have and
21 the notes, notebooks.

22 You're excused. However, before you go, I will like
23 to join you in the jury room for just one moment to thank you
24 each individually for the service that you performed.

25 Thank you. You're excused.

D86LLESF

Verdict

1 (Jury discharged)

2 THE COURT: Set a date for sentencing roughly 90 to a
3 hundred days out.

4 THE LAW CLERK: Friday, November 15, 3 o'clock in the
5 afternoon.

6 THE COURT: November 15. Government.

7 MR. WEDDLE: That's good for the government, your
8 Honor.

9 We have an application with respect to bail.

10 MR. DURKIN: Judge, would you have a date in December
11 like the 6th or the 13th?

12 THE LAW CLERK: 3 o'clock Friday, December 6.

13 MR. DURKIN: Thank you.

14 THE COURT: Mr. Jackson, is that date suitable for
15 you?

16 MR. JACKSON: Yes, Judge.

17 THE COURT: Mr. Ryan.

18 MR. RYAN: Yes, your Honor.

19 THE COURT: December 6.

20 MR. RYAN: I'm sorry, Judge. That is a problem. I'll
21 be out of the country on December 6 due to a preexisting
22 engagement.

23 THE LAW CLERK: 13th at three, Friday the 13th.

24 MR. RYAN: Yes, I believe that's correct. Thank you.

25 MR. DURKIN: That's fine. Thank you.

D86LLESF

Verdict

1 THE COURT: All right. December 13.

2 Mr. Weddle, you had a motion?

3 MR. WEDDLE: Yes, your Honor. In light of the
4 defendants' conviction, the burden of proof now shifts to the
5 defendants to prove by clear and convincing evidence that
6 they're not likely to flee.

7 The government believes that with respect to two
8 defendants, Dr. Lesniewski and Joseph Rutigliano, a substantial
9 increase in their bail conditions should be made. And with
10 respect to defendant Baran, who testified and perjured herself
11 during this trial, the government seeks detention.

12 MR. RYAN: On behalf of Mr. Rutigliano, he's appeared
13 at every court proceeding. He asked for a speedy trial two
14 years ago. He's not going anywhere. He has his family here in
15 the courtroom with all of his friends. His roots are on Long
16 Island. He's surrendered his passport, if that gives any
17 comfort to the government.

18 There are substantial issues arising out of this trial
19 concerning many issues that your Honor is aware of. So I
20 respectfully urge that the bail be continued to sentencing.

21 MR. WEDDLE: With respect to Mr. Rutigliano, the
22 current bail conditions are \$100,000 personal recognizance bond
23 with one cosigner, travel restricted to the continental United
24 States. He's already been ordered to surrender travel
25 documents and to make no new application.

D86LLESF

Verdict

1 We would request home confinement, an increase in the
2 bond to \$1 million. We'd seek cash security of a hundred
3 thousand dollars and security with respect to that bond by
4 Mr. Rutigliano's two pieces of real property, and travel
5 restricted to the Southern and Eastern Districts of New York.

6 MR. RYAN: I respectfully submit that's an
7 unreasonable request, Judge.

8 Mr. Rutigliano is looking forward to sentencing and
9 pursuing this case in the Court of Appeals for the Second
10 Circuit. He has no intention of going anywhere. He's fully
11 secured to appear here today and will continue in these
12 proceedings, pursue his appeal.

13 MR. WEDDLE: Your Honor, our quick look at the
14 guidelines this morning indicates that all defendants are
15 facing likely in excess of 15 years on a guidelines
16 calculation.

17 And so we think that given the conviction and the
18 likelihood that they're going to be serving substantial time in
19 prison -- with respect to two of the defendants, we're not
20 seeking detention, but we do think that it is appropriate to
21 increase the conditions of their confinement.

22 THE COURT: I'm going to make a reference of the bail
23 dispute to the magistrate court where I think the parties would
24 be in better position to argue it out.

25 MR. DURKIN: Judge, could I be heard on that issue?

D86LLESF

Verdict

1 THE COURT: Yes. Whatever the magistrate judge
2 decides, you can bring it here on appeal.

3 MR. DURKIN: Judge, I'd really like you to do that if
4 you don't mind. You've heard all the evidence here. If this
5 weren't so serious, I'd think it was a joke.

6 Dr. Lesniewski has been aware of being investigated by
7 the federal government since the Eastern District of New York
8 began this in 2008 and he's been aware of that grand jury. He
9 was aware of this grand jury. He has appeared in every
10 proceeding. All his connections are here. He's borderline
11 penniless at this point. He has nowhere to go to begin with,
12 and I really think that this is vindictiveness for the exercise
13 of his trial rights.

14 I do not understand how the government can say that he
15 would have a motive to flee after being -- after waiting five
16 years to come here for his day in court.

17 We too intend to challenge this in the Second Circuit,
18 but that's neither here nor there right now. He has appeared
19 every time. There should be no cloud hanging over his head
20 today. This is bad enough news. The bond conditions are
21 plenty good enough.

22 It's my understanding, and Mr. Weddle can correct me
23 if I'm wrong, I believe he's already surrendered his passport.
24 I think he has \$750,000 bond. It's absolutely unnecessary to
25 refer this to the magistrate judge and I would ask you, please,

D86LLESF

Verdict

1 this is bad enough without having to do that.

2 If the government has --

3 THE COURT: Mr. Durkin, as you can see, the issue is
4 very intensely argued on both sides. This is not something
5 that the Court should short shrift.

6 MR. DURKIN: When would we have that argument?

7 THE COURT: I'm sorry?

8 MR. DURKIN: When would we have that argument?

9 THE COURT: Well, what I was suggesting is you have
10 the argument first before the magistrate judge, and if there's
11 any disagreement there, then you can bring it here. The
12 magistrate judge conceivably may agree with you and that could
13 be the end of it, or if he does not, then you could come back
14 here.

15 I would suggest that you do that early part of next
16 week. That's the earliest opportunity that the government and
17 the parties are available for a magistrate court.

18 Mr. Weddle.

19 MR. WEDDLE: Your Honor, I think that with respect to
20 Dr. Lesniewski, the government is also not seeking detention,
21 but we do think that an increase in the conditions of his bail
22 is warranted.

23 Our information is that he has approximately \$500,000
24 in an account as liquid assets and approximately another
25 \$400,000 in an individual retirement account and I believe that

D86LLESF

Verdict

1 he has equity in his home as well.

2 We think that this issue should be resolved right
3 away. We could go directly from here to magistrate's court.

4 I also believe that your Honor is best situated to
5 decide with respect to Ms. Baran because our application with
6 respect to her depends in part on the fact that in our view she
7 lied on the stand here. And I think that if the prosecution
8 provided her enough incentive to commit an additional crime
9 here during trial, then it certainly provides enough incentive
10 for her to flee, and/or at the very least the facts here
11 indicate that she cannot show by clear and convincing evidence
12 that she is unlikely to flee.

13 So with respect to her, we believe that your Honor is
14 best situated to decide the issue. But if we're going to the
15 magistrate court, we would suggest that we go directly to the
16 magistrate court.

17 THE COURT: I think you can do that directly.

18 The question of whether or not Ms. Baran committed
19 perjury, again, Mr. Weddle, is not one about which the Court
20 could make a snap judgment. The government would have to
21 itemize exactly where in the proceedings the government
22 believes the perjury occurred, and that is something that I
23 doesn't believe the government can do any more on a snap
24 judgment than I could.

25 So to the extent that you're persuaded that that is

D86LLESF

Verdict

1 the case, you have to gather your evidence and present it in a
2 way that would be compelling. I don't believe that here right
3 off the cuff we're in a position for you to make that argument
4 or for the Court to decide it so promptly.

5 MR. WEDDLE: Again, your Honor, I would just reiterate
6 that the burden is on Ms. Baran to prove by clear and
7 convincing evidence that she's likely to follow the Court's
8 orders and appear as required.

9 THE COURT: That may be, but I'm sort of putting the
10 issue of whether or not -- you've raised the issue of perjury.
11 I'm saying to you that you would have to muster your case
12 because part of your argument is for that result is that
13 according to you she committed perjury, but you would have to
14 muster the evidence and present it in a compelling way. And
15 I'm just questioning whether that's something that could be
16 done right here right now.

17 If you believe that you can, I think that the best
18 thing to do would be to take the issue to the magistrate court
19 even now and see if you can resolve it there. If you cannot,
20 we'll give you the earliest opportunity next week in which we
21 can get together again.

22 MR. RYAN: May I make a suggestion, your Honor?

23 THE COURT: Yes.

24 MR. RYAN: That we continue this until Monday for
25 magistrate availability because right now I think we have to go

D86LLESF

Verdict

1 down to the probation department. We have enough to contend
2 with in a bail proceeding.

3 THE COURT: Mr. Weddle, is the government prepared to
4 adjourn until Monday in magistrate's court?

5 MR. WEDDLE: May I just have a moment, your Honor.

6 THE COURT: Mr. Durkin.

7 MR. DURKIN: Judge, I can't appear on Monday.

8 THE COURT: If one of you is not available Monday,
9 then I would suggest you should proceed directly today to
10 magistrate court.

11 Mr. Ryan, I understand your concern, but there is
12 urgency on everybody's part to get this matter resolved.

13 MR. DURKIN: Judge, let me speak to my cocounsel
14 because Mr. Dratel may.

15 THE COURT: In the meantime, I don't want to keep the
16 jury waiting any longer. I'm going to step in there for just a
17 moment.

18 MR. WEDDLE: Your Honor, we'd like to go to magistrate
19 court now and we can find some transcript cites on the way.

20 MR. DURKIN: Judge, Mr. Dratel can be here Monday, so
21 that's fine with us. I believe that's fine with all three.

22 MR. WEDDLE: Your Honor, we're here today. I think we
23 should do this right now, go directly to magistrate's court and
24 resolve this right now. There's a flight risk right now, your
25 Honor, and your Honor should simply send us directly to

D86LLESF

Verdict

1 magistrate's court. We've all blocked out today to work on
2 this case. Rather than returning on Monday, we should do it
3 right now.

4 MR. DURKIN: There's no urgency.

5 THE COURT: Mr. Weddle, I think I agree there's no
6 compelling urgency that I see to make a material difference
7 between today and Monday. So the parties should arrange for
8 magistrate court first thing Monday, as soon as everybody can
9 agree to a convenient time.

10 Thank you.

11 MR. RYAN: Thank you, Judge.

12 MR. WEDDLE: Your Honor, could I just ask for one
13 modification, or I guess it's not a modification of bail, but
14 could your Honor just order Dr. Lesniewski not to liquidate the
15 assets that he holds at LPL Financial, which includes his IRA
16 account and the other account that he has there?

17 MR. DURKIN: We'll agree not to liquidate anything
18 other than perhaps for legal fees or legal expenses, but the
19 recitation you have I don't believe is accurate. But we will
20 agree --

21 THE COURT: I think that it goes without saying that
22 any party, any of the defendants who takes any steps at this
23 point that creates even the possible suspicion of flight risk
24 or liquidation of any assets may face severe consequences. So
25 I think --

D86LLESF

Verdict

1 MR. DURKIN: Not a problem.
2 THE COURT: -- proceed at your risk.
3 MR. DURKIN: Not a problem.
4 THE COURT: Thank you.
5 MR. WEDDLE: Thank you, your Honor.
6 (Trial concluded)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25